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IN THE

Supreme Court of the United States

October Term, 1966

No. 953

D. J. MILLER,
Petitioner,

vs.

COUNTY OF LOS ANGELES, a political subdivsion of the State of California,
Respondent.

RESPONDENT'S ANSWER TO PETITION FOR WRIT OF CERTIORARI

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WESTERN PRINTING COMPANY, WHITTIER—GIBSON 6-1722

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PRELIMINARY STATEMENT

Petitioner D. J. Miller seeks by this proceeding a Writ of Certiorari to review a judgment decreeing that respondent County of Los Angeles is the owner of certain described real property located in the County of Los Angeles, and that the petitioner has no right, title, interest or estate in and to the same. The judgment was affirmed by the U.S. Court of Appeals for the Ninth Circuit on July 21, 1966.

In view of the excellent opinion of the Circuit Court and the fact that there is no federal question involved herein, we respectfully submit that the Petition be denied.

STATEMENT OF THE CASE

Petitioner commenced this action on December 31, 1963 and filed an amended complaint on January 27, 1964. The amended complaint is designated "Complaint for Declaratory Relief and to Impress Constructive Trust on Real Property For Damages and For Unjust Enrichment" (Cl. Tr. 12-20). In the amended complaint, petitioner prays for a declaration that he is the owner of the real property therein described, and alleges that the respondent County acquired title to said property through alleged surreptitious tax sale proceedings and further that the real property had been deeded to the State of California on July 1, 1959, and deeded to respondent on October 19, 1960 (Cl. Tr. 15). The thrust of petitioner's action is thus directed to the validity of the deeds to the State of California and the deed to respondent County of Los Angeles.

On April 20, 1964, the action was dismissed by the District Court. On appeal, the Court of Appeal for the Ninth Circuit reversed the judgment of dismissal on the ground that although petitioner's amended complaint failed to state a claim upon which relief could be granted under the diversity jurisdiction of the federal court, sufficient allegations were contained in the

amended complaint to invoke jurisdiction under 28 U.S.C. § 1331. In reversing the original judgment of dismissal, the Ninth Circuit stated that they were in no way passing upon the merits of petitioner's claimed grievance (*Miller v. County of Los Angeles* (1965) 341 Fed. 2d 964).

Upon remand, respondent County moved for summary judgment based upon affidavits which clearly showed that in truth and in fact no federal question was presented and that the cause was barred by the applicable California statutes of limitation (§§ 175, 3521 and 3809 of the Revenue and Taxation Code of the State of California). Leland E. Skinner, head clerk of the Tax Deeded Lands Section of the Los Angeles County Tax Collector's Office, averred *inter alia* that the taxes levied against the property in question became delinquent in 1953; that the property was sold to the State of California by operation of law pursuant to §3436 of the California Revenue and Taxation Code on June 30, 1954; that on July 1, 1959, the property was deeded to the State of California pursuant to § 3511 of the Revenue and Taxation Code and that on October 19, 1960, the property was deeded to respondent County of Los Angeles (Cl. Tr. 70-72). Attached to Mr. Skinner's affidavit as Exhibits A, B and C were certified copies of the deeds from the Tax Collector to the State and the deed to respondent County (Cl. Tr. 73-75). These deeds were *prima facie* evidence that:

(a) The property was assessed as required by law.

(b) The property was equalized as required by law.

(c) The taxes were levied in accordance with law.

(d) The taxes were not paid.

(e) At a proper time and place the property was sold as prescribed by law.

(f) The property was not redeemed.

(g) The person who executed the deed was the proper officer.

(h) That the amount for which the property was sold was legally a lien on the real property.

(§3517, Revenue and Taxation Code)

Likewise, these deeds conclusively establish the regularity of all other proceedings from the assessments of the Assessor to the execution of the deeds (§ 3518, Revenue and Taxation Code).

Affiant Skinner further averred that prior to the sale to the State and prior to the deeding of the property to the State and prior to the deeding of the property to respondent County, examination was made of the County tax rolls beginning with the year of delinquency (1953) to and including the last equalized roll to ascertain the address of the last assessee and that no address appeared on said roll (Cl. Tr. 72).*

*Both §§ 3358 and 3799 of the California Revenue and Taxation Code provide in relevant part that in order to ascertain the address of the last assessee of the tax-sold or tax-deeded property, the only examination that need be made is of the assessment of the property on the tax rolls beginning with the year of delinquency to and including that of the last equalized roll.

Affiant Skinner also averred that he had examined the records in the Los Angeles County Assessor's Office and that said examination disclosed that no property statement as is required by §§ 441 through 447 of the Revenue and Taxation Code was filed by petitioner between 1952 and 1960 and as a consequence, no address for petitioner appeared on the tax rolls for said years (Cl. Tr. 72).

In opposition to respondent's motion for summary judgment, petitioner filed points and authorities and an affidavit *which in no way controverted the facts set forth in the affidavit of affiant Skinner* (Cl. Tr. 94-114). Petitioner's affidavit, at most, alleged that he commenced a redemption payment plan in *1951* wherein the first payment (and it would appear the only payment) was made on November 13, 1951 (see exhibits A and A1, Cl. Tr. 110-111); that receipt for the first payment was mailed to petitioner in December, 1951 (Exhibit B, Cl. Tr. 112); that other mail from an unknown person had been forwarded to petitioner (Exhibit B1, Cl. Tr. 113) and that on January 10, 1962, in response to a letter from petitioner apparently dated December 16, 1961, he was advised by the Tax Collector that the property had been deeded to respondent County on October 19, 1960 (Exhibit C, Cl. Tr. 114).

On July 12, 1965, the District Court granted the County's motion for summary judgment (Cl. Tr. 124) and findings of fact, conclusions of law and judgment in favor of respondent County of Los Angeles were filed and entered on July 12, 1965, and July 13, 1965 (Cl. Tr. 116-121). Petitioner's motion for new trial or rehearing was denied August 16, 1965 (Cl. Tr. 149). The U.S. Court of Appeal for the Ninth Circuit affirmed the judgment in favor of respondent on July 21, 1966, and denied petitioner's motion for rehearing on September 21, 1966.

ISSUE

The question presented herein is not whether without notice to the property owner as prescribed by law, although his address was available, the County of Los Angeles may acquire property for tax delinquencies but rather, whether or not petitioner's cause of action is barred by the applicable California statues of limitation (Revenue and Taxation Code §§ 175, 3521 and 3809).

The fact of the matter is that petitioner's address was *not* known, was *not* available or readily ascertainable due to his own neglect in failing to file the property statement as required by § 441 of the California Revenue and Taxation Code and he now seeks to invoke the due process clause to provide relief from his own negligent conduct.

SUMMARY OF ARGUMENT

Sections 175, 3521 and 3809 of the Revenue and Taxation Code provide a one-year statute of limitations within which to attack the validity of tax deeds issued to the State of California or to a political subdivision thereof as a means of enforcing *ad valorem* property tax delinquencies. The deeds here in issue were executed on July 1, 1959 (State), and October 19, 1960 (County). Petitioner did not file the present action until December 31, 1963, some four years and five months subsequent to the deeding of the property to the State of California and three years and two months subsequent to the deeding of the property to respondent County and, therefore, his cause of action is barred by the aforementioned sections.

Petitioner cannot claim as error a lack of notice by mail since this error, if in fact it be one, was caused solely by his own neglect. Petitioner failed and neglected to file with the Assessor of Los Angeles County a property statement as is required by Sections 441 through 447 of the Revenue and Taxation Code and as a result, no address appeared on the tax rolls. Since no address appeared on the rolls, no notice by mail could be sent petitioner. Petitioner seeks to hold respondent liable for a problem created solely by petitioner's neglect.

I.

SUMMARY JUDGMENT WAS PROPER IN THE INSTANT ACTION

The purpose of summary judgment is to achieve a quick resolution of a dispute when there is no necessity for a trial on the facts. As was stated in *Albatross Shipping Corp v. Stewart* (CA 5 1964) 326 Fed 2d 208, at 211:

> "... The prime purpose of the summary judgment procedure is to secure the just, speedy and inexpensive determination of any action ..."

FRCP 56(c) provides in pertinent part:

> "... the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law ..."

Respondent submits no question of fact is presented by the instant action and, therefore, the granting of the motion for summary judgment was proper. Petitioner in no way controverted the affidavit of Mr. Skinner, which was filed in support of respondent's motion. Petitioner did not deny that his property was tax delinquent; he did not deny that the deeds were executed on the dates mentioned; and he did not deny that he had failed to file the property statements required

by law. Respondent respectfully submits that since no question of fact was presented to the Court below, it was justified in ruling as a matter of law that petitioner's cause of action is barred by Sections 175, 3521 and 3809 of the Revenue and Taxation Code of the State of California.

II.

CALIFORNIA STATUTORY MODE FOR THE ENFORCEMENT OF DELINQUENT TAX LIENS.

Although perhaps redundant, respondent feels that a brief resumé of the applicable California law respecting tax delinquencies is appropriate to set the proper frame of reference herein.

California provides a complete and exhaustive statutory mode for the enforcement of and the collection of delinquent ad valorem property taxes. Every tax on real property is a lien against the real property assessed (Revenue and Taxation Code Sec. 2187)* which attaches annually as of noon on the first Monday in March preceeding the fiscal year for which the taxes are levied (Sec. 2192). The first half of the taxes are due November 1 and become delinquent December 10 (Secs. 2605 and 2617), and the second half of the taxes levied are due February 1 and become delinquent April 10 (Secs. 2606 and 2618). After the second half of taxes on real property is delinquent, the Tax Collector

*All references hereafter are to the California Revenue and Taxation Code unless otherwise stated.

is required to prepare a delinquent roll (Sec. 2624) and thereafter publish same (Sec. 3351), together with a notice that unless the total amount due is paid, the time and place at which the property will be sold to the State by operation of law (Sec. 3352). Not less than 21 nor more than 28 days after the publication of the delinquent list, the real property on which the taxes have not been paid is sold by operation of law to the State of California (Sec. 3436).

Five years after the property is sold to the State, the Tax Collector is required to execute a deed conveying the property to the State (Sec. 3511). Prior to such deeding, the Tax Collector is required to publish notice thereof (Secs. 3354 and 3355) and to forward a notice thereof by registered mail to the last known assessee. To ascertain the address of the last assessee, the Tax Collector is required to examine the assessment of the property on the rolls beginning with the year of delinquency to and including the last equalized roll (Sec. 3358).

Every person is required to file a written property statment under oath with the Assessor between noon on the first Monday in March and 5:00 p.m. on the last Monday in May annually (Sec. 441), setting forth all taxable property owned, claimed, possessed, controlled or managed by that person (Sec. 442). The property statement required by the Assessor shows the person's name, place of residence or place of business, and whether he is the owner of any taxable property (Sec. 543).

Subsequent to the deed to the State, the real property is either sold at public auction (Secs. 3691 - 3731) or by agreement conveyed to a county, city or other public agency (Secs. 3771 - 3814). The latter procedure was followed in the instant action.

Whenever land has been deeded to the State, a county may purchase the property by agreement (Secs. 3791.3 and 3775). The County Tax Collector is required to give notice of this agreement by publication and is required to mail a notice thereof by registered mail to the last known assessee (Secs. 3798 and 3799). To ascertain the address of the last known assessee, the Collector is required to examine the rolls beginning with the year of delinquency to and including the last equalized roll (Sec. 3799). Thereafter, the Tax Collector executes a deed of the property to the County which, except as against actual fraud, is conclusive evidence of compliance with requirements of the Code (Secs. 3804 and 3806).

The Revenue and Taxation Code further provides a one-year statute of limitations within which to attack the validity of the deed to the State (Secs. 175 and 3521), as well as a similar period to attack the validity of the deed from the State to the County (Secs. 175 and 3809).

III.

PETITIONER'S CAUSE OF ACTION IS BARRED BY SECTIONS 175, 3521 AND 3809 OF THE REVENUE AND TAXATION CODE OF THE STATE OF CALIFORNIA.

A. Sections 175, 3521 and 3809 Are Statutes of Limitation.

Section 175 of the Revenue and Taxation Code of the State of California provides:

> "Sec. 175. All deeds heretofore and hereafter issued to the State of California or to any taxing agency, including taxing agencies which have their own system for the levying and collection of taxes, by reason of delinquency of property taxes or assessments levied by any taxing agency or revenue district, shall be conclusively presumed to be valid unless held to be invalid in an appropriate proceeding in a court of competent jurisdiction to determine the validity of said deed commenced within one year after the execution of said deed, or within one year after the effective date of this section, whichever be later. Such proceedings may be prosecuted within the time limits above specified in the manner and subject to the provisions of Sections 3618 and 3636 of this code."

Section 3521 provides:

> "Sec. 3521. A proceeding based on an alleged invalidity or irregularity of any deed to the State for taxes or of any proceedings leading up to the

deed can only be commenced within one year after the date of recording of the deed to the State in the county recorder's office or within one year after June 1, 1941, whichever is later.

"Sections 351 to 358, inclusive, of the Code of Civil Procedure do not apply to the time within which a proceeding may be brought under the provisions of this section."

Section 3809 provides:

"Sec. 3809. A proceeding based on alleged invalidity or irregularity of any agreement or deed executed under this article can only be commenced within one year after the execution of the instrument."

In construing Section 175 the Supreme Court of California in *McCaslin v. Hamblin,* 37 Cal. 2d 196; 231 Pac. 2d 1, stated at page 198:

"It may not be questioned that the section is a Statute of Limitations as distinguished from a curative act, and that the time factor is reasonable so as to bar these actions commenced almost two years after the effective date (citing cases), unless it may be said that the plaintiffs were owners in possession as against whom the statute would not apply."

In Sears v. County of Calaveras, 45 Cal. 2d 518; 289 Pac. 2d 336, the plaintiff brought an action in 1948 to declare invalid a tax deed issued in 1943. Defendants demurred on the ground that plaintiff's action was

barred by the the limitations contained in Sections 175, and 3521 of the Revenue and Taxation Code. Plaintiff contended that those sections do not apply to an owner in exclusive and undisputed possession. In rejecting this argument the Court stated at page 521:

> "The contention that a statute limiting the time for the commencement of an action to set aside a deed to the state for delinquent taxes does not apply to an owner in exclusive and undisputed possession of the property taxes, is largely based on a rule stated to be that a general statute of limitations does not run against such an owner to remove a cloud upon his title. It may be assumed that such is the general rule (citing cases).
>
> "But the general rule does not apply as against a special statute of limitation foreclosing the commencement of an action to set aside a deed to the state for delinquent taxes beyond one year from and after the recording of the deed to the state."

The Court further stated at page 520:

> "Both of these sections are statutes of limitations (citing cases)."

In *Davault v. Essig,* 80 Cal. App. 2d 970; 183 Pac. 2d 38; Cert. denied 68 Supreme Court 660; 333 U.S. 843; 92 L. Ed. 112 the Court stated at pages 972 and 973:

> "The appellants argue that Section 3521 does not apply in such a case as this where the attack

is made on jurisdiction or constitutional grounds raising the point that original proceedings which led to the sale to the State were entirely invalid This contention is without merit since Section 3521 is not a curative act but is a Statute of Limitation and repose, providing a reasonable period of limitation (citing cases). The principles applied in *Mercury-Herald Co. v. Moore,* 22 Cal. 2d 269 (138 Pac. 2d 673; 147 A.L.R. 1111) are applicable here. If the shortening of the period of redemption, where a reasonable time is allowed in which to act, is not violative of constitutional rights it would seem to be even more clear under principles which are frequently applied that a right exists to fix some reasonable limitation upon the time within which a constitutional right may be exercised, by which a limitation is placed on the time within which an action may be commenced to attack the validity of a deed to the State, which deed is given after the five-year period of absolute right of redemption has expired.".

In *Federated Income Properties, Inc. v. State of California,* 82 Cal. App. 2d 893; 187 Pac. 2d 460, property had been sold to the State of California for nonpayment of taxes. After acquiring title, the State sold the property to the City of South Pasadena pursuant to an agreement authorized by Chapter 8 of Part 6 of Division 1 of the Revenue and Taxation Code (Sections 3791 et seq.). Plaintiff two years later brought an action to quiet title to the property and the City of South Pasadena, among other defenses, claimed that

the action was barred by Section 3809 of the Revenue and Taxation Code. In affirming the judgment for the defendant, the Court stated at page 901:

> "3. *The Statute of Limitations.* Since the sale to the City of South Pasadena was valid and since this action was not commenced within one year after the execution of the deed from the State to the City, it is barred by Section 3809 of the Revenue and Taxation Code."

Other cases holding Sections 175, 3521, and 3809 to be Statutes of Limitation are: *People v. Chambers,* 37 Cal. 2d 552; 233 Pac. 557; *Edwards v. City of Santa Paula,* 138 Cal. App. 2d 375; 292 Pac. 2d 31; and *Tannhauser v. Adams,* 31 Cal. 2d 169; 187 Pac. 2d 176.

Statutes and code sections should be given a reasonable interpretation according to the apparent or evident intention of the legislature (*Dickey v. Raisin Proration Zone,* 24 Cal. 2d 796; 151 Pac. 2d 505; *Alameda Co. v. Kuchel,* 32 Cal. 2d 193; 195 Pac. 2d 17) and it seems quite apparent from a study of Revenue and Taxation Code that the legislature intended some finality to tax deeds and the proceedings leading up thereto (see Sections 175, 176, 177, 3521, 3522, 3711, 3809 and 3810). As was stated in *Sears v. Calaveras, supra,* 45 Cal. 2d 518 at page 521, "If the contention of the plaintiffs should prevail, the finality of tax proceedings will be thrown into confusion. The validity of tax deeds as against an owner of real property

would be placed in suspension for an indefinite period and until at his election he chose to attack it. Without limit of time he could defend against it."

In Howard v. State of California (1963), 216 Cal. App. 2d 281; 30 Cal. Rptr. 708 (Hearing denied by California Supreme Court), a case identical with the one at bar, plaintiffs brought an action to quiet title to certain real property which had been deeded to the County pursuant to Revenue and Taxation Code Sections 3791 et seq. Plaintiffs contended therein that failure to send notices by registered mail voided the tax proceedings and subsequent tax deeds. The Court rejected this argument stating at page 285:

> "If timely objection had been made to any purported irregularity in the tax proceedings leading to the county's eventual tax title the court might have entertained such objection, but continued dereliction by plaintiffs has inexplorably foreclosed them from relief. There must be a finality to tax enforcement procedures. There is in tax cases, the unquestioned tax debt to justify the taking and in addition, the taxpayer is permitted at least six years within which to redeem or attack any supposed irregularity in the tax proceedings. Such period is a most reasonable allowance for the cure of the laxity of tax delinquency."

B. Petitioner's Action was not Timely Filed.

1. Petitioner is barred from contesting the validity of the deeds from the Tax Collector to the State.

The affidavit of Leland E. Skinner filed in conjunction with respondent's motion for summary judgment set forth the following facts with respect to the real property here involved:

1.	Taxes Levied for Year	1953
2.	Taxes Paid	No
3.	Sold to the State	June 30, 1954
4.	Deeds to State	July 1, 1959
5.	Deeds Recorded	July 30, 1959
6.	Deed to County	October 19, 1960
7.	Deed Recorded	November 21, 1960.

Petitioner had up and until August 1, 1960, to contest the validity of the deeds to the State or the proceedings leading up to said deeds (Sec. 3521).* Petitioner did not file his action until December 31, 1963, some three years and five months *after* the expiration of the statutory period and, therefore, any action contesting the validity of said deeds is barred.

2. Petitioner is barred from contesting the validity of the deed to respondent County.

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*Section 175 provides a one-year statute of limitations from the date of *execution* of the deed, while Section 3521 provides a one-year statute of limitations from the date of *recording* said deed.

Petitioner had until October 20, 1961 to contest the validity of respondent's deed. Petitioner did not file his action until more than two years and one month after the expiration of this period and, therefore, his action with respect to this deed is also barred.

IV.

RESPONDENT IS NOT ESTOPPED FROM ASSERTING THE BAR OF THE STATUTE OF LIMITATIONS.

Petitioner cites *City of Bakersfield v. Miller* (1965), 46 Cal. Rptr. 661; *Hoffman v. City of Red Bluff* (1965), 63 Cal. 2d 584, 47 Cal. Rptr. 553; *Mulkey v. Reitman* (1966), 64 Cal. 2d 529, 50 Cal. Rptr. 881; *McKenna v. Wallace* (1965), 344 Fed. 2d 432; *Schroeder v. City of New York,* 83 Sup. Ct. 279; *Cook v. Katiba* (Fla. 1966), 190 So. 2d 309; *Citizens Suburban Co. v. Rosemont Development Co.* (1966), 244 A.C.A. 745, 53 Cal. Rptr. 551; and *Glus v. Brooklyn Eastern District Terminal,* 79 Sup. Ct. 760, for the proposition that respondent should be estopped from asserting the bar of the staute of limitations (Petition, pages 7-12). These cases can be of no help to petitioner. With respect to the first four cases, respondent has no quarrel with the abstract propositions of law quoted therefrom in the petition. They are sound principles of law but they simply have no application to the case at bar. In the *Schroeder* case, *supra,* the court held that in the sale of tax delinquent property, notice by publication is insufficient in those situations where a per-

son's name and address are known or very easily ascertainable. There can be no question in this case that petitioner's address was *not* known, was *not* available or for that matter easily ascertainable. But for petitioner's failure to file a property statement, an address would have appeared on the assessment roll and a mail notice of the Tax Collector's actions would have been sent him. Petitioner cannot now seek redress to a problem created by his own neglect and failure to comply with the law.

In each of the latter three cases there was an affirmative misrepresentation through acts, words, or silence which prevented the plaintiff from taking steps to retrieve his position or to avoid loss. The courts invoked the well-known doctrine of equitable estoppel and held that defendants were estopped from relying on certain alleged facts because of their affirmative conduct.

No such circumstances exist in the instant case since respondent took no affirmative action upon which petitioner relied to his detriment. Apparently, it is petitioner's position that a letter written January 10, 1962 (Exhibit C, Cl. Tr. 114) in response to an inquiry by petitioner dated December 19, 1961, affirmatively misrepresented the facts to him and caused him to delay filing his action. Whether that letter contained any item of misinformation is totally immaterial and irrelevant herein because at the time of petitioner's inquiry on December 19, 1961, the statutory period within which he could contest the validity of the deed to re-

spondent had already expired. Inconceivably, petitioner now argues that information given him *after* the statutory period had expired misled him.

The only other averments upon which petitioner apparently relies are those found in the affidavit filed by petitioner in support of his motion for judgment on the pleadings (Cl. Tr. 94 and 95) wherein he states that he was "aware that defendant held a public auction of such tax delinquent property *only* in the first few months of each year at which time in the years 1960 and 1961 affiant telephoned the officers of defendant and was informed that said real property was not to be sold in said sales and was assured that he could redeem the property prior to any such sale at public auction." At most, petitioner's affidavit shows that in 1960 and 1961, someone informed him that his property was not among those listed for sale at public auction pursuant to Sections 3691 through 3731 and that should it be put up for sale, petitioner had the legal right to redeem the property prior to such sale. These statements were obviously true for the property was not sold at public auction and Sections 3696.5 and 3706 provide a right of redemption prior to the sale.

The doctrine of estoppel is not favored in the law particularly where it is sought to be asserted against a public agency. Four things must be presented in order to invoke the doctrine of estoppel: (1) the party to be estopped must know all the facts; (2) he must intend that his conduct shall be acted on or must so

act that the party asserting the estoppel has a right to believe it is so intended; (3) the latter must be ignorant of the facts and (4) he must rely on the former's conduct to his injury (*Skidmore v. County of Solano,* 154, Cal. App. 2d 449, 453).

None of the latter three elements referred to above are presented in the instant action unless it can be said that reliance upon a correct statement of the law will give rise to an estoppel.

Furthermore, respondent submits that public policy requires the application of the statute of limitation in the instant action. Should this Court hold that mere averments that the taxpayer telephoned some unnamed officers of the County who advised the taxpayer that his property was not to be sold in certain years and could be redeemed by him prior to sale, are sufficient to place in issue the validity of tax deeds in an action filed more than three years after their execution, the validity of all tax deeds heretofore issued would be jeopardized. This result is exactly that which concerned the California Supreme Court in *Sears v. Calaveras, supra,* 45 Cal. 2d 518. There must be some finality to tax enforcement procedures and respondent submits the six-year period within which the taxpayer may redeem or attack the proceedings is a more than reasonable time within which to cure tax delinquencies.

Petitioner was advised on January 10, 1962, that his property had been deeded to respondent on October

19, 1960, and he did not file the present action until almost two years after acquiring this knowledge. Assuming solely for the purpose of argument that respondent should be estopped from asserting the statute of limitations because petitioner was misled to his detriment, he was not so misled subsequent to January 10, 1962, and any misrepresentations, if any there were, were cured as of that date. If respondent should be estopped, it should only be so for a period not to exceed one year subsequent to the time petitioner was advised of the disposition of his property; i.e., up and until January 10, 1963. This one-year period would give petitioner the same period of time allowed him by Section 3809 to attack the validity of the deed to respondent and yet, petitioner slept on his rights until December 31, 1963, almost two years after he was advised by the Tax Collector that his property had been deeded to respondent.

V.

PETITIONER'S FAILURE TO FILE A PROPERTY STATEMENT EXCUSED THE TAX COLLECTOR FROM SENDING HIM A MAIL NOTICE.

Section 441 of the Revenue and Taxation Code provides:

> "Sec. 451. Every person shall file a written property statement, under oath, with the assessor between noon on the first Monday in March and 5 p.m. on the last Monday in May, annually, and within such time as the assessor may appoint. At any time, as required by the assessor for assessment purposes, every person shall furnish information or records for examination."

Section 442 provides in part:

> "Sec. 442. The property statement shall show all taxable property owned, claimed, possessed, controlled, or managed by:
>
> (a) The person making the statement. . . ."

It is from this property statement that the local tax rolls are prepared and unless such a statement is filed, no address will appear on said rolls. Without such address, no notice of the sale or deeding of property for tax delinquency can be sent by mail to the last assessee. In the instant action, at no time pertinent to inquiry did petitioner ever file the required property statment with the Assessor of Los Angeles County and,

therefore, no address appears on the tax rolls regarding the last assessee of the property.

Revenue and Taxation Code §3358 provides:

"After the first publication of the notice of the deed to the State of tax-sold property and not less than 21 nor more than 35 days before the date of deeding, when tax-sold property is to be deeded, the tax collector shall send by registered mail to the last assessee of the tax-sold property at his last known address either a copy of the publication or a printed notice of deeding the property to the State. *To ascertain the address of the last assessee of the tax-sold property an examination shall be made of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll.*" (Emphasis added.)

Revenue and Taxation Code §3799 provides:

"The tax collector shall mail a copy of the notice not less than 21 nor more than 28 days prior to the effective date of the agreement, by registered mail to the last assessee of each portion of the property at his last known address.

"To ascertain the address of the last assessee of the tax-deeded property an examination shall be made of the assessment of this property on the rolls beginning with the year of delinquency to and including that of the last equalized roll.

"It is not necessary to mail a copy of the notice to any party who files with the tax collector a

written acknowledgment of receipt of a copy of the notice or a waiver of the notice."
(Emphasis added.)

These code sections were fully complied with by the Tax Collector of Los Angeles County. Because petitioner did not file a required property statement, no address appeared on the tax rolls and the Tax Collector was unable to send the notice required by mail.

With respect to the notice required by the code, the California Supreme Court has stated:

> "The inquiry of the tax collector in endeavoring to ascertain the post office address of the delinquent property owners need not extend beyond an examination of the assessment roll during the period mentioned. All the tax collector has to do as to mailing notice is to look at the assessment rolls and ascertain to whom the property about to be sold was last assessed, and whether the address of the party appears thereon. If it does, he must mail a notice. *If it does not, no mailing of notice is required.* He is not bound to look beyond or outside the assessment roll to ascertain the address of a party when the assessment roll does not furnish it . . ." (*Jacoby v. Wolff,* 198 Cal. 667 at 681; 247 Pac. 195) (Emphasis added)

See also *Scott v. Beck,* 204 Cal. 78; 266 Pac. 951, and *Penaat v. Terwilliger,* 23 Cal. 2d 865; 147 Pac. 2d 552 wherein tax sale proceedings were held valid though no notice was sent to the last assessee. In each

case, the name of the assessee appeared on the rolls, but no address appeared thereon and the court held the tax collector was excused from complying with the sections requiring notice by mail.

The Skinner affidavit filed in support of respondent's motion for summary judgment (Cl. Tr. 70-72) affirmatively shows that prior to any of the actions taken herein, examination was made of the tax rolls commencing with the year of delinquency (1953) to and including the last equalized roll and no address appeared thereon. These facts were not controverted by petitioner.

The Tax Collector did all that was required of him under the law. But for petitioner's failure to file a property statement, an address would have appeared on the assessment roll and a mail notice of the Tax Collector's actions could have been sent him. Respondent submits petitioner cannot now base his claim to the property on a problem created by his own neglect and failure to comply with the law.

CONCLUSION

It is respectfully requested that this Honorable Court deny the Petition for Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit. Petitioner's cause of action, if any he had, has long since been barred by the statute of limitations and his failure to file a property statement excused the Tax Collector from sending him notice by mail of the sale and deeding of his property for tax delinquency.

Respectfully submitted,

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